

# **EXHIBIT 3**

# RICHARDS IP LAW

Patent • Trademark • Copyright

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December 29, 2015

Robert O. Fox  
LUEDEKA NEELY GROUP, P.C.  
900 S. Gay Street  
Suite 1504  
Knoxville, TN 37902

**VIA EMAIL**  
**CONFIRMATION VIA FIRST CLASS MAIL**

Re: Infringement of XL Brands' U.S. Trademark Registration No.  
1,824,786 for the mark STIX  
Our Ref: TRC5-8011

Dear Bob:

This letter is in response to your letter dated June 2, 2015. We hereby renew our demand that Base King cease and desist from infringing XL Brands' trademark STIX based on Base King's use of the mark EnviroSTIX. We further demand that Base King cease and desist from infringing XL Brands' trademark STIX based on Base King's use of the marks RUGSTIX and STIXTAPE (also used as STIX Tape) and any other flooring-related product marketed by Base King that includes a "STIX" designation.

Your June 2<sup>nd</sup> letter raises several alleged defenses. You contend that: 1) there are differences between Base Kings' services and XL Brands' good; 2) that the term "stix" is a relatively dilute mark; and 3) that our analysis of similarities of the marks unduly dissects Base Kings' mark EnviroSTIX. We dispute each of your foregoing contentions. I address each of those contentions below.

First, you allege that there are differences between your EnviroSTIX product and XL Brands' STIX product. However, both products are adhesives used to adhere flooring products to a subfloor. Although Base King's Registration No. 4,058,441 is for a service, Base King clearly markets its adhesive and primer/sealer products under the EnviroSTIX trademark. For example, attached is a Base King brochure for its EnviroSTIX products. This brochure describes "EnviroSTIX® Pre-applied Adhesive" and "EnviroSTIX® Primer/Sealer". Thus, Base King uses its EnviroSTIX mark in association with flooring adhesive products. These are precisely the goods listed in XL Brands' Registration No. 1,824,786 for STIX. Base Kings' EnviroSTIX primer/sealer is clearly a related flooring product used for preparation of the floor for adhesive application. Therefore, Base King's and XL Brands' goods are identical or at least closely related.

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Base Kings' brochure is directed to adhesive and flooring products and its intended consumers are professional flooring installers and do-it-yourself installers. For example, the brochure states "NO WAIT TIME TO USE YOUR NEW FLOOR" and "No messy buckets to spill." The reference to "No messy buckets to spill" is clearly an attempt to distinguish over adhesive product, such as those sold by XL Brands.

The brochure contains installation instructions that state, *inter alia*:

1. Always install on a clean, air-dried substrate.
2. Roll and cross-roll EnviroSTIX® Primer/Sealer onto the substrate (NOTE: Use of EnviroSTIX® Primer/Sealer is required for manufacturers warranty to remain valid.)
3. Allow the primer to dry completely.
4. Install flooring with EnviroSTIX® Pre-applied Adhesive.
5. Roll and cross-roll all material installed with a 100 lb roller.
6. The new floor is now ready for full use.

\*NOTE: This sheet is an outline of the most essential installation instructions. Prior to actual installation of material, the detailed installation instructions provided by both Base King and the manufacturer of the selected material should be consulted and followed.

If there are any installation questions related to the use of EnviroSTIX® Pre-applied Adhesive System, call Base King Technical Support at 1-888-428-3106.

These instructions are not directed to a flooring product manufacturer. They are directed to professional flooring installers and do-it-yourself installers. These are the same category of customers that are the consumers of XL Brands' STIX adhesive products.

Second, you allege that the term "stix" is relatively dilute. As support for your contention you cite eleven other registered trademarks that include the term "stix" as a part of the registered mark. However, none of those registrations are for flooring products, except for STIX 4. Furthermore, XL Brands' date of first use predates all of those registrations except STIX 4, STIX-ALL, CHIL-STIX and STIX-ON. However, the STIX 4 and STIX-ON marks are no longer in use and the required maintenance documents have not been filed for renewal of those registrations. Attached are specimens for the STIX-ALL and CHIL-STIX marks. As you can see these adhesives are not related to the flooring market. Thus, with respect to flooring products, the mark STIX is not dilute at all. Furthermore, XL Brands has been using the mark STIX in association with its adhesive products continuously and nationwide since 1983. Therefore, contrary to your assertion, XL Brands' STIX trademark is a strong mark with respect to flooring products.

Lastly, you allege that our analysis of the similarities of the marks STIX and EnviroSTIX unduly dissects your client's mark. However, our analysis does not dissect your client's mark.

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Our contention is that Base King's mark EnviroSTIX appropriates the entirety of XL Brands' registered mark STIX. Furthermore, it is important to note that in actual use Base King capitalizes the "stix" portion of its mark and therefore adds emphasis to the STIX aspect of the mark. This feature adds to a substantial likelihood of confusion between the two marks.

We believe that the analysis of the elements of a likelihood of confusion for the marks RUGSTIX and STIX Tape are identical to those for EnviroSTIX. Briefly, the RUGSTIX and STIX Tape marks are both used for an adhesive tape for adhering carpet to flooring or adhering other flooring related products. Therefore, the products, the class of customer and the channels of trade for these products are the same as those used for XL Brands' STIX products. The RUGSTIX and the STIX Tape marks appropriate the entirety of XL Brands' registered mark STIX. Therefore, the appearance, the meaning and the sound of the marks are similar and are likely to cause confusion of the consuming public.

In addition, XL Brands owns Registration No. 4,251,229 for the mark Dyna-Stix (copy attached), Registration No. 4,747,310 for the mark STIX ESSENTIAL (copy attached), Registration No. 4,787,433 for the mark DRISTIX (copy attached) and Registration No. 4,834,927 for the mark PADSTIX (copy attached). Thus, XL Brands owns a family of STIX marks for flooring adhesive products. As you are well aware, a family of marks is entitled to a broad range of protection.

Accordingly, we hereby demand that Base King immediately cease and desist all infringement of XL Brands' trademark STIX. We further demand that Base King immediately cease and desist from all use of the mark EnviroSTIX, RUGSTIX, STIX Tape and any other adhesive products for flooring and associated goods marketed by Base King that includes a "STIX" designation, or variations thereof, that are likely to cause confusion with XL Brands' products sold under the STIX family of trademarks. Please contact me within ten (10) days of your receipt of this letter and advise me of your intentions in this matter.

Yours truly,



Robert E. Richards

Enclosures

cc: Joe Tuttolomondo  
Chip Howalt

# ADVANCED PRE-APPLIED POLY-ACRYL

Solvent-free, Acrylic Dispersion

0.23 mm

## Polyester Scrim

Brown Silicon Paper

AFERA 4001 P11 30 N / 25 mm

DIN 53112

DIN 53112

-30° up to 120° C

Good

Very Good

Very Good

## Aggressively Adhesive

**The Professional  
Adhesive System  
for Healthier,  
Smarter Flooring**

EnviroSTIX<sup>®</sup> Applied Acrylic Adhesive for Resilient Flooring is manufactured to exacting dispersion adhesive tapes to their intended end use, providing they are applied and used in accordance with the instructions. EnviroSTIX<sup>®</sup> includes usage under proper jobsite/construction conditions outlined in the product data/technical literature. EnviroSTIX<sup>®</sup> Base King's EnviroSTIX<sup>®</sup> is an excellent adhesive for bonding most resilient applications including PVC-free, VCT, Rubber and many other quality materials to any properly prepared flooring. EnviroSTIX<sup>®</sup> has a proven track record of over 10 years from date of installation that its EnviroSTIX<sup>®</sup> Adhesive System will not have

C® will reimburse, at cost, any damaged material and will reimburse the user for any reasonable expenses made after January 1, 2009 for new floor covering. The use of seconds, or trial runs with void covering with date purchased, pricing, name and style of materials, and factory run/lot numbers and warranty claim verification.

4. 3) Installations shall be done in a professional manner by qualified installation technicians. The adhesive distributor, in written form, giving the date, location and size of the installation. This should be solved in the claim.

ty does not cover bond failure caused by abnormal use, nor failure caused by cleaning chemicals or the floor covering and/or adhesive. Neither does this warranty cover staining of sheet goods (including ber mats, deck stains, asphalt driveway sealers, moisture, or mildew staining caused by floor patching compounds) beyond Base King, LLC's control, which includes but are not limited to moisture in substrates in excess of that caused by flooding, storms, natural disasters, broken pipes, defective substrates, or defective floor coverings. We exclude from this warranty the following: (a) workmanship or materials of the contractor or subcontractor; (b) workmanship or materials of the installer; (c) workmanship or materials of the manufacturer; (d) workmanship or materials of the supplier; (e) workmanship or materials of the end user; (f) workmanship or materials of the contractor or subcontractor; (g) workmanship or materials of the installer; (h) workmanship or materials of the manufacturer; (i) workmanship or materials of the supplier; (j) workmanship or materials of the end user. This warranty is void where prohibited by law. The above limitations may not apply to you. To qualify for the warranty, the job number does not allow these exclusions, so the above limitations must be inspected by both supplier and Base King, LLC.



and, poly-acrylic adhesive system — designed to meet today's rigorous presence of high moisture and/or alkalinity. The stage is set that will allow utilize the flooring industry by changing the way flooring contractors, users think about installations.

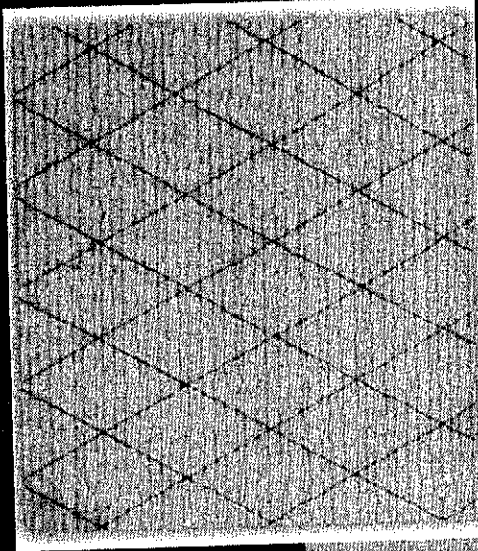
- No VOCs
- No messy buckets to spill

NEW FLOOR

MOISTURE  
9+ % RH

mediation

R INSTALLATIONS



**EnviroSTIX® Application  
on Resilient Flooring**

industry has been looking required all commercially solvents because of their ne in constant contact with

or holding the bonding easily transported, applied made it impossible to milials. The safest and most available replacement for chemicals was water em-based adhesives that were reliable and economical

latest scientists in the world knew that all concrete contains water, even that if water in water-based adhesives mixes with the moisture in the and compromises the bond strength. The result is a failure of the flooring

90s and early 2000s were a time when flooring and adhesive money to settle claims when their products failed. To try and stem this industry in the flooring business. Called "Moisture Remediation", tollats" and millions of man-hours developing ancillary applications refer from impacting and causing bond failure in the adhesives whose job it ase efforts produced some success, but the successes have not been consis-

Ensure the best installation results on your next job with our fine particulate co-polymer latex acrylic primer/sealer for EnviroSTIX® installations.

Limit of 99% RH.

Will reduce current existing vapor emissions by up to 80%

pH (alkalinity) limit: 11.5

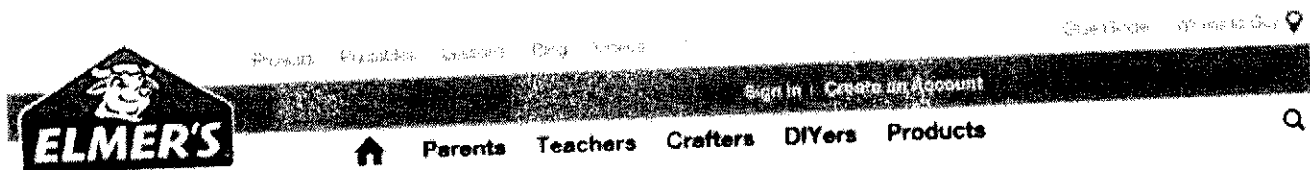
Recommended pre testing for moisture:  
See and follow same recommended ASTM test(s) & procedures for the EnviroSTIX® adhesive.

Sold in 1 Gallon Jugs or 5 Gallon Buckets

## ESSENTIAL ENVIROSTIX® INSTALLATION INSTRUCTIONS

1. Always install on a clean, air-dried substrate.
2. Roll and cross-roll EnviroSTIX® Primer/Sealer onto the substrate. (NOTE: Use of EnviroSTIX® Primer/Sealer is required for manufacturers warranty to remain valid.)
3. Allow the primer to dry completely.
4. Install flooring with EnviroSTIX® Pre-applied Adhesive.
5. Roll and cross-roll all material installed with a 100 lb roller.
6. The new floor is now ready for full use.

**\* NOTE:** This sheet is an outline of the most essential installation instructions. Prior to actual installation of material, the detailed installation instructions provided by both Base King and the manufacturer of the selected material should be consulted



Elmer's &gt; Glues &amp; Adhesives &gt; Stix-All® Cement



## Stix-All® Cement

### Product Description:

Perfect for everyday light household repairs. Bonds with a flexible, water resistant bond that fills gaps and provides impact resistant bond that fills gaps and provides impact resistance too. Clean up with dry rag to clean hands, surfaces and lock before adhesive cures. Wash hands with soap & water.

### Product Rating:

☐ 1
 ☐ 2
 ☐ 3
 ☐ 4
 ☐ 5

Zoom (+)

High Res




View MSDS sheet

Find Products Online

Find Products In Store

50

Retailer	Product Name	In Stock?	
Office Depot	Elmer's Hi-Tech Stix All Adhesive - 03 Quince	YES	<input type="button" value="BUY NOW"/>
	Elmer's Hi-Tech Stix All Adhesive - 03 Quince	YES	<input type="button" value="BUY NOW"/>

CLASSIFIED  
UL

Flame Spread 10  
Smoke Developed 0  
Tested as applied at a coverage rate of 200 ft<sup>2</sup>/gal  
Flash point of liquid coating (closed cup): No flash to  
312U R0815W2

**RECOMMENDATIONS:**

- APPLICATION INSTRUCTIONS:**

**APPLICATION INSTRUCTIONS:**  
Store and apply between 40°F (4°C) and 100°F (38°C).

- ### SAFETY PRECAUTIONS

CONTAINS: Methylene Chloride  
PRODUCT HAZARDS: WARNING Moderate eye irritant. Causes skin  
irritation. Severe respiratory tract irritant. Harmful if swallowed. Cancer  
hazard. Central nervous system, Liver, Heart, Lungs may be damaged by  
overexposure

**overexposure**  
**PRECAUTIONS:** In case of fire: Use water spray, foam, dry chemical or carbon dioxide. In case of spills: If safe, contain spill with inert absorbent and transfer to containers for disposal. Keep spilled product off of sewers, watersheds, or water systems. Handling and storage: There is possibility of pressure buildup in closed containers when heated. Water spray may be used to cool the containers. Avoid contacting and avoid breathing the material. Use only in a well ventilated area. Avoid breathing vapor. Use only with adequate ventilation. Keep container closed. Avoid contact with eyes, skin and clothing. Wash thoroughly after handling. Avoid contact with eyes, skin and clothing. Wash thoroughly after handling. Keep container closed. Emptied container retains vapor and product residue. Observe all labeled safeguards until container is cleaned. **DO NOT CUT OR WELD ON OR NEAR THIS CONTAINER.** Aluminum is not an acceptable material of construction for pumps, mixers, fittings or storage for this product. Wear safety glasses with side shield. Respiratory protection is normally required. Wear protective gloves. Local exhaust ventilation or other engineering controls are normally required when handling or using this product to avoid overexposure.

**FIRST AID MEASURES:** EYES: Flush eyes for 20 minutes. Get immediate medical attention. SKIN: Wash with soap and water. Remove contaminated clothing and launder. Get medical attention if irritation develops or persists. IF VAPORS INHALED: Remove to fresh air. Restore breathing, if necessary. Keep warm and quiet. Call a physician. IF SWALLOWED: Severely irritating. Do not induce vomiting. Seek medical attention immediately. Drink 2 glasses of water or milk to dilute. Do not give anything by mouth to an unconscious person. (1921)

[illegible]

An H.B. Fuller Company  
MADE IN THE U.S.A.  
ISO 9001  
Certified By  
BQS INC

Manufactured by Specialty Construction Brands, Inc.  
6107 Industrial Way, Houston, TX 77011  
For 24 Hour Emergency Information Call:  
1-888-853-1758 (Medical) 800-424-9300 (Transport)



HC 5606

2008 • 27-5



**United States of America**  
United States Patent and Trademark Office

**Dyna-Stix**

**Reg. No. 4,251,229**

**Registered Nov. 27, 2012**

**Int. Cl.: 1**

**TRADEMARK**

**PRINCIPAL REGISTER**

XL BRANDS LLC (GEORGIA LIMITED LIABILITY COMPANY)  
198 NEXUS DRIVE  
DALTON, GA 30721

FOR: ADHESIVES FOR USE ON FLOORING MATERIALS, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 1-30-2012; IN COMMERCE 1-30-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 85-436,710, FILED 9-30-2011.

THOMAS MANOR, EXAMINING ATTORNEY



*David J. Kyfas*

Director of the United States Patent and Trademark Office

# United States of America

United States Patent and Trademark Office

## STIX ESSENTIAL

**Reg. No. 4,747,310**

**Registered June 2, 2015**

**Int. Cl.: 1**

**TRADEMARK**

**PRINCIPAL REGISTER**

XL BRANDS, LLC (GEORGIA LIMITED LIABILITY COMPANY)  
198 NEXUS DRIVE  
DALTON, GA 30721

FOR: ADHESIVES FOR FLOORING MATERIAL, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 3-23-2012; IN COMMERCE 3-23-2012.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,824,786 AND 4,251,229.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STICKS", APART FROM THE MARK AS SHOWN.

SER. NO. 86-410,120, FILED 9-30-2014.

TOBY BULLOFF, EXAMINING ATTORNEY



*Michelle K. Lee*

Director of the United States  
Patent and Trademark Office

**United States of America**  
United States Patent and Trademark Office

**DRISTIX**

**Reg. No. 4,787,433**

**Registered Aug. 4, 2015**

**Int. Cl.: 1**

**TRADEMARK**

**PRINCIPAL REGISTER**

XL BRANDS, LLC (GEORGIA LIMITED LIABILITY COMPANY)  
198 NEXUS DRIVE  
DALTON, GA 30721

FOR: ADHESIVES FOR FLOORING MATERIAL, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 10-31-2014; IN COMMERCE 10-31-2014.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,824,786 AND 4,251,229.

SN 86-410,137, FILED 9-30-2014.

TOBY BULLOFF, EXAMINING ATTORNEY



*Michelle K. Lee*

Director of the United States  
Patent and Trademark Office

**United States of America**  
United States Patent and Trademark Office

**PADSTIX**

**Reg. No. 4,834,927**

**Registered Oct. 20, 2015**

**Int. Cl.: 1**

**TRADEMARK**

**PRINCIPAL REGISTER**

XL BRANDS, LLC (GEORGIA LIMITED LIABILITY COMPANY)  
198 NEXUS DRIVE  
DALTON, GA 30721

FOR: ADHESIVES FOR FLOORING MATERIAL, NAMELY, CARPET CUSHION, IN CLASS  
1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 10-31-2014; IN COMMERCE 10-31-2014.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-  
TICULAR FONT, STYLE, SIZE, OR COLOR.

OWNER OF U.S. REG. NOS. 1,824,786 AND 4,251,229.

SEC. 2(F).

SER. NO. 86-410,159, FILED 9-30-2014.

TOBY BULLOFF, EXAMINING ATTORNEY



*Michelle K. Lee*

Director of the United States  
Patent and Trademark Office